

**Assembly Bill No. 1155**

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Passed the Assembly September 9, 2011

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*Chief Clerk of the Assembly*

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Passed the Senate September 7, 2011

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 4663 of the Labor Code, relating to workers' compensation.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1155, Alejo. Workers' compensation.

(1) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

This bill would state the intent of the Legislature to prohibit the use of risk factors and specified characteristics to deny an injured worker his or her rightful benefit when disabled in the workplace. The bill would also state the intent of the Legislature to prohibit the apportionment of risk factors and characteristics without prohibiting the apportionment of documentable preexisting nonindustrial causes of disability or holding an employer liable for any percentage of permanent disability not directly caused by an injury arising out of and occurring in the course of employment.

(2) Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability, and requires that the report include an apportionment determination in order to be considered complete on the issue of permanent disability. Existing law requires a physician to make an apportionment determination by finding what approximate percentage of the permanent disability is caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage is caused by other factors.

This bill would prohibit the approximate percentage of the permanent disability caused by other factors from including consideration of race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics.

*The people of the State of California do enact as follows:*

SECTION 1. Section 4663 of the Labor Code is amended to read:

4663. (a) Apportionment of permanent disability shall be based on causation.

(b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report shall include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability is caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability is caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. The approximate percentage of the permanent disability caused by other factors shall not include consideration of race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician cannot make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

(e) Subdivisions (a), (b), and (c) shall not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2.

(f) For purposes of this section, “genetic characteristics” has the same meaning as that term is defined in subdivision (d) of Section 10123.3 of the Insurance Code.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) Under the state’s workers’ compensation system, injured workers or their dependents are entitled to certain benefits that include compensation for permanent partial disability or death arising out of, and in the course of, employment, without regard to fault. In return, employers are shielded from civil liability in any claims of negligence related to the employee’s injury.

(2) Workers’ compensation benefits should never be based on the personal characteristics and risk factors of the employee, and their use runs counter to the original intent of apportionment.

(b) It is the intent of the Legislature to ensure that risk factors and characteristics of race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics are not used to deny an injured worker his or her rightful benefit when disabled in the workplace.

(c) It is the intent of the Legislature to prohibit the apportionment of risk factors and characteristics without prohibiting the apportionment of documentable preexisting nonindustrial causes of disability in individual cases or without holding an employer liable for any percentage of permanent disability not directly caused by the injury arising out of and occurring in the course of employment.







Approved \_\_\_\_\_, 2011

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*Governor*